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Australian Government
Department of Infrastructure and Regional Development

<p>FOR: Senator the Hon Fiona Nash cc: Mr Mike Mrdak, Secretary Ms Pip Spence, A/g Deputy Secretary</p>	<p>PDR ID: MS17-000974</p>	<p>For Decision by: As soon as possible Reason: The office of Chief Magistrate is currently vacant.</p>
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SUBJECT: Appointment of the Chief Magistrate and additional Magistrate of the Court of Petty Sessions of Norfolk Island

Recommendation: That you:

- (a) Agree that Ms Wendy Cull be offered appointment as Chief Magistrate of the Court of Petty Sessions of Norfolk Island for a period of 5 years.
- (b) Agree that Ms Cull be appointed on the proposed terms and conditions.
- (c) Sign the attached instrument of appointment of Ms Cull.

Key Issues:

1. The Chief Magistrate of the Court of Petty Sessions (the Chief Magistrate) is a key office holder under the Norfolk Island governance regime. The position is currently vacant, as a result of the retirement on 31 March 2017 of the former Chief Magistrate, Judge Warren Donald of the Federal Circuit Court (FCC).
2. The FCC has declined to offer a replacement FCC judge. The Attorney-General's Department (AGD), through the Judicial Conference of Australia, identified ^{s47F} suitable candidates, all being retired judicial officers of state or territory magistrates' courts, or the FCC. AGD provided a preliminary assessment of each candidate, including on the basis of input from relevant state and territory justice departments.
3. The Department of Infrastructure and Regional Development shortlisted ^{s47F} candidates: Ms Wendy Cull, a recently retired Magistrate of the Queensland Magistrates Court; and ^{s47F} [redacted]. An informal 'interview' with each was held on 1 May 2017. Their CVs are at Attachment A.
4. Both Ms Cull and ^{s47F} [redacted] would be highly suitable, and both are available for an immediate commencement. However, in our discussion with Ms Cull, it was evident that she has extensive experience in, and enthusiasm for, working as a judicial officer in remote communities on a broad range of matters and has a very sound appreciation of particular difficulties and challenges arising in such communities. AGD also advised that the Director-General of the Queensland Department of Justice and Attorney-General attested to the strength of Ms Cull's experience, skills and energy, as did the Queensland Chief Magistrate.
5. Accordingly, the Department recommends that you appoint Ms Wendy Cull as the Chief Magistrate, for a period of five years, commencing on the date agreed between the Department and Ms Cull.
6. The office is not an office within the scope of the Remuneration Tribunal's functions, so it is necessary for the terms and conditions of the Chief Magistrate appointment to be determined. We suggest the appointment be made on the basis of the terms and conditions agreed between Ms Cull and the Department.

<p>Cleared by ^{s47F} [redacted] Executive Director Date: 5 May 2017 Phone: 6274 ^{s47F} [redacted] Division: Local Government and Territories</p>	<p>(a) Agreed/Not Agreed (b) Agreed/Not Agreed (c) Signed/Not signed</p> <p><i>[Signature]</i></p>	<p>FIONA NASH <i>[Signature]</i></p>
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Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

7. The Department suggests that a daily rate based on the full-time salary for the Chief Judge of the FCC be offered, (approx \$2304 per day) with travel allowance at the rate applicable to public offices as determined by the Remuneration Tribunal (\$502 per day). Given the part time nature of the appointment, there is no requirement to determine matters such as leave.
8. An instrument of appointment in these terms is attached for your signature, if you agree.
9. If you agree to the terms of this brief, the Department will contact Ms Cull to offer her appointment as Chief Magistrate, finalise the terms and conditions, and then dispatch the appointment instrument to her.

Background:

10. The Norfolk Island Court of Petty Sessions is the lower court of Norfolk Island. Norfolk Island legislation gives many functions to the Court of Petty Sessions. The Court of Petty Sessions Act 1960 (the Act) provides for the appointment of magistrates by the Minister, for such period, and upon such terms and conditions, as the Minister determines. The Act requires the appointment of one Magistrate as Chief Magistrate.
11. By virtue of the Administrative Review Tribunal Act of Norfolk Island, the Chief Magistrate is also the President of that Tribunal. The Chief Magistrate has also generally been appointed, by the Administrator, as Coroner, under the Coroners Act.
12. Most recently, the Chief Magistrate was a judge of the FCC, Judge Donald (previously, the Chief Magistrate was a magistrate of the ACT Magistrates Court). That is, an existing judicial officer of another court held the additional office of Chief Magistrate. In such circumstances, no additional remuneration was paid to the Chief Magistrate – however his or her travel costs were paid to the relevant court.
13. Judge Donald would travel to Norfolk Island s37(1)(c). During these periods, Judge Donald would sit as Chief Magistrate; as President of the ART (rarely) and also would discharge his FCC judge jurisdiction (in particular in relation to family law matters).
14. Judge Donald retired on 31 March 2017 from all his judicial offices, and unfortunately, the FCC has indicated it is not in a position to provide a replacement. The ACT Magistrates Court indicated some years ago it was no longer prepared to provide a magistrate to be appointed as Chief Magistrate.
15. The Attorney-General's Department (AGD), through the Judicial Conference of Australia, identified^{s4} suitable candidates, all being retired judicial officers of state or territory magistrates' courts, or the FCC. AGD provided a preliminary assessment of each candidate, including on the basis of input from relevant state and territory departments.
16. The office of Chief Magistrate does not fall under the Remuneration Tribunal's jurisdiction. Hence it is necessary for the terms and conditions of the appointment to be determined. We have consulted with the AGD, and consider that it would be appropriate to offer a daily rate worked out by reference to the full-time salary payable under the relevant Remuneration Tribunal determination to the Chief Judge of the FCC (\$420,810 pa), with an additional 15% to represent superannuation. This would amount to \$2199.00 per day. We suggest that the Chief Magistrate also be entitled to travel allowance, determined by reference to the Remuneration Tribunal's determination 2015/11 Official Travel by Office Holders. This would be an amount, for Norfolk Island, of \$502.00 per day.
17. The Department of Prime Minister & Cabinet has confirmed that an appointment to the office of Chief Magistrate is not a 'significant appointment' within the Cabinet Handbook and does not require Cabinet approval.
18. Previously, the Chief Justice of the Supreme Court of Norfolk Island (Bcsanko J of the Federal Court) has indicated a desire to be consulted on matters concerning Norfolk Island courts. As a matter of courtesy, we are seeking his views on the proposed appointment.

Consultation:

19. Attorney-General's Department; Department of the Prime Minister and Cabinet; Chief Justice of the Norfolk Island Supreme Court.

Attachments:

Attachment A - CVs for Ms Cull b47F

Attachment B - Instrument of appointment for Ms Cull

Instrument No. A10/2017



Australian Government

COURT OF PETTY SESSIONS ACT 1960 (NI)

INSTRUMENT OF APPOINTMENT OF MAGISTRATE AND CHIEF MAGISTRATE OF THE COURT OF PETTY SESSIONS OF NORFOLK ISLAND

I, **FIONA JOY NASH**, Minister for Local Government and Territories

- (a) under paragraph 6(1)(a) of the *Court of Petty Sessions Act 1960* (NI) (the Act), appoint WENDY ^{s11C(1)(a)}CULL as a Magistrate of the Court of Petty Sessions of Norfolk Island; and
- (b) under subsection 6(2) of the Act, further appoint WENDY ^{s11C(1)(a)}CULL as Chief Magistrate of the Court of Petty Sessions of Norfolk Island

on the terms and conditions agreed between the Department of Infrastructure and Regional Development and Ms Cull, and for a period of five years commencing on the day agreed between the Department of Infrastructure and Regional Development and Ms Cull.

Date: 22 May 2017

FIONA NASH
Minister for Local Government and Territories
Minister for Regional Development
Minister for Regional Communications


Australian Government
**Department of Infrastructure, Transport,
Regional Development and Communications**
To: The Hon Nola Marino MP (for decision)
cc: The Hon Barnaby Joyce MP
cc: Mr Simon Atkinson, Secretary
cc: Dr Rachel Bacon, Deputy Secretary
Appointment of Magistrate and Chief Magistrate of the Norfolk Island Court of Petty Sessions
Action required by: 31 March 2022
Reason: In advance of expiry of the current appointment.
Recommendations:

1. That you **sign** the Instrument of Appointment at **Attachment A** to appoint Chief Magistrate Wendy Cull as a Magistrate and the Chief Magistrate of the Norfolk Island Court of Petty Sessions for a further three years commencing 6 June 2022.

 Signed / Not Signed

2. That you **sign** the letter at **Attachment B** informing Chief Magistrate Cull of her appointment for a further term.

 Signed / Not Signed

The Hon Nola Marino MP
Date:
Comments:
Key Points:

1. The Chief Magistrate of the Court of Petty Sessions is an essential office holder under the Norfolk Island governance regime.
2. Chief Magistrate Wendy Cull's five-year appointment expires on 5 June 2022. The Chief Magistrate has indicated a willingness to continue in the role for an additional three years (ending 5 June 2025).
3. Chief Magistrate Cull was appointed in 2017 after the Federal Court of Australia declined to offer a replacement Federal Court Judge. Chief Magistrate Cull was selected by the then Minister because of her extensive experience and enthusiasm for working as a judicial officer in remote communities on a broad range of matters. At the time of her initial appointment, the Attorney-General's Department advised that the Queensland Director-General of the Department of Justice and the Queensland Chief Magistrate attested to the strength of

MS22-000704

Chief Magistrate Cull's experience, skills and energy. Chief Magistrate Cull was a Queensland Magistrate from 2002 to 2016.

4. While the Chief Magistrate is an independent judicial officer, she maintains a good working relationship with the Department of Infrastructure, Transport, Regional Development and Communications (the Department) in regard to the administration of the Court of Petty Sessions. Furthermore, officers from the Department understand that she is highly regarded by the Norfolk Island legal profession and her fellow lay magistrates.
5. Accordingly, the Department recommends that you appoint Chief Magistrate Cull for an additional three years, commencing on 6 June 2022, by signing the instrument of appointment at **Attachment A**, and that you sign the letter at **Attachment B** informing the Chief Magistrate of the appointment.
6. Should you appoint the Chief Magistrate for a further term, the Department will write to her seeking agreement to continue the current terms and conditions applying to her roles. The Office of the Chief Magistrate is not within the scope of the Remuneration Tribunal's functions. Instead, the Chief Magistrate receives a daily rate of \$2,123 and a travel allowance.

Background:

7. The Norfolk Island Court of Petty Sessions is the lower court of Norfolk Island. Norfolk Island legislation gives functions to the Court of Petty Sessions. The *Court of Petty Sessions Act 1960* (NI) (the Act) provides for the appointment of magistrates by the Minister, and it requires one magistrate to be appointed as the Chief Magistrate.
8. Under the *Administrative Review Tribunal Act 1996* (NI), the Chief Magistrate is the President of that Tribunal. The Chief Magistrate currently also holds the appointment as the Norfolk Island Coroner expiring 5 June 2022; however, the *Coroners Act 1993* (NI) specifies that the Administrator may make that appointment.
9. The Department of the Prime Minister and Cabinet has previously advised that the appointment of the Office of the Chief Magistrate is not a 'significant appointment' and therefore does not require Cabinet approval.

Consultation:

10. The Norfolk Island Administrator supports the appointment of the Chief Magistrate for a further term.
11. The Chief Justice of the Supreme Court of Norfolk Island (the Honourable Justice Anthony Besanko of the Federal Court) has previously indicated a desire to be consulted on Norfolk Island court and judiciary matters. Upon consultation in February 2022, His Honour raised no objection to appointment of the Chief Magistrate for a further term.

Name: Oliver Holm

Position: Assistant Secretary

Division: Norfolk Island Branch

Ph: 02 6274 s22(1)(a)(ii)

Mob: s22(1)(a)(ii)

Date: 23 March 2022

Contact Officer: s22(1)(a)(ii)

Section: Norfolk Island Branch

Ph: 02 6274 s22(1)(a)(ii)

Mob: s22(1)(a)(ii)

Attachments:

A: Instrument of Appointment

B: Letter informing Ms Cull of appointment



COURT OF PETTY SESSIONS ACT 1960 (NI)

Instrument of Appointment of Magistrate and Chief Magistrate of the Court of Petty Sessions of Norfolk Island

I, **NOLA BETHWYN MARINO**, Assistant Minister for Regional Development and Territories, and Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development

- (a) under paragraph 6(1)(a) of the *Court of Petty Sessions Act 1960* (NI) (the Act), appoint WENDY ^{s11C(1)(a)}CULL as a Magistrate of the Court of Petty Sessions of Norfolk Island; and
- (b) under subsection 6(2) of the Act, further appoint WENDY ^{s11C(1)(a)}CULL as Chief Magistrate of the Court of Petty Sessions of Norfolk Island

on the terms and conditions agreed between the Department of Infrastructure, Transport, Regional Development and Communications and Ms Cull for a period of three years commencing on 6 June 2022.

Dated 29/3 2022

Nola Marino

NOLA MARINO

Assistant Minister for Regional Development and Territories
Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development



The Hon Nola Marino MP

Assistant Minister for Regional Development and Territories
Federal Member for Forrest

Ref: MS22-000704

31 MAR 2022

Her Honour Magistrate Wendy Cull
Chief Magistrate of the Norfolk Island Court of Petty Sessions
s37(1)(c)

Dear Chief Magistrate Cull

I write to congratulate you on your appointment as Magistrate and Chief Magistrate of the Norfolk Island Court of Petty Sessions for a further term of three years, commencing on 6 June 2022.

The appointment was made under section 6 of the *Court of Petty Sessions Act 1960* (NI). I enclose a copy of the Instrument of Appointment for your reference.

Officials of the Department of Infrastructure, Transport, Regional Development and Communications will contact you in due course to confirm the terms and conditions applying to your performance of official business during this further term.

The Australian Government appreciates your continued willingness to perform this role. I thank you earnestly for the significant and ongoing contribution you make to the Norfolk Island judicial system.

Yours sincerely

Nola Marino

Enc

cc Mr Eric Hutchinson, Administrator of Norfolk Island

The Hon Nola Marino MP

Parliament House Canberra | (02) 6277 4293 | minister.marino@infrastructure.gov.au

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